THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.5248 of 2006

Dated: 19.04.2007

Between:

Mohd.Abdul Qader.

..... PETITIONER

AND

Deputy Transport Commissioner &
Secretary, Regional Transport Authority,
Nizamabad.

.....RESPONDENT

The Hon'ble Sri Justice Bilal Nazki
and
The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.5248 of 2006

Order: *(Per The Hon'ble Sri Justice Bilal Nazki)*

Heard the learned Counsel for the parties.

This Writ Petition is filed questioning the Demand Notice in R.No.3724/A3/2005 issued by the respondent-Regional Transport Authority, Nizamabad, on 19-08-2005 directing the petitioner to pay the tax and penalty of Rs.47,865/-.

The facts, which revealed from the record of the case, are that the petitioner did not pay the tax for the vehicle bearing No.AP215U5043, for which, he had national permit from

01-04-2004 till 30th September, 2005. For the first time, he moved an application before the authority concerned on

14-03-2005 claiming that the vehicle had met with

an accident on 17-05-2004 and was undergoing repairs and sought exemption from payment of tax for the period from
17-05-2004 to 06-04-2005.

The petitioner wants this Court to believe that the vehicle in question was repaired from 17-05-2004 till 06-04-2005 *i.e.,* almost for a period of one year. He also wants this Court to believe that the vehicle was not in use during this period.

This is, essentially, a question of fact although it appears to be farfetched.

The respondent-authority has come to the conclusion that the petitioner was not able to prove that the vehicle was immobilised for almost a year due to an accident as in his reply to the show cause notice dated 08-04-2005, the petitioner did not bring to the notice of the respondent-authority as to how the vehicle was brought to Nizamabad from the place of the accident. He also did not inform the authorities concerned as to what were the repairs required and what repairs were made in the workshop. No bills or certificates issued by the workshop were also produced by the petitioner to

support his claim. This finding of fact cannot be disturbed by us in our writ jurisdiction.

Coming to the second aspect whether the tax may be collected for the period, during which, the vehicle had not been kept for use, the learned Counsel for the respondent-authority submits that it is immaterial whether the vehicle was immobilised or not because in terms of Rule 12 (a) of the A.P.Motor Vehicles Taxation Rules, 1963, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the Registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid.

This rule came up for consideration before this Court in a judgment reported in ***K.Venugopala Rao vs. Regional transport Officer, Nalgonda District and another***[1]***.*** In Para 7 of the said judgment, this Court held as under:

'Now in the light of these judgments,

let us examine Rule 12-A. This Rule is made under the caption of, “Liability for payment of tax in respect of motor vehicles kept for use” and creates a presumption that a motor vehicle shall be deemed to be kept for use and would be liable to tax unless and until the person having possession or control of the vehicle intimates in writing to the Licensing Officer before the commencement of the quarter for which the tax is due, that the vehicle shall not be used after expiry of the period for which the tax has been paid. So the presumption created under Rule 12-A is that, a motor vehicle shall be deemed to be kept for use and would be liable to pay tax unless a notice in writing is given before the commencement of the quarter for which the tax is not paid and the second proviso further clarifies that the vehicle not covered by valid fitness certificate or valid permit would be presumed to have been kept out of use and would not be taxable. Unless and until an intimation is given as required under Rule 12-A, the second proviso of Rule 12-A would not come into operation. Rule 12-A has to be read along with Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963, which lays down that the Government may, by notification from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use. Even otherwise, the requirement under second proviso to Rule 12-A is that the vehicle should be without valid fitness certificate and valid permit.

> But the petitioner himself in his reply to the show-cause notice, has stated that although he had no valid permit beyond 31-03-1996, but valid fitness certificate was there which was effective till 30-07-1996 and insurance certificate was valid up to 28-09-1996'

The learned Counsel for the petitioner submits that he had given an intimation admittedly on 14-03-2005, therefore, the tax could not be levied beyond 14-03-2005.

We would have agreed to his contention, but for the fact that the petitioner himself made a representation dated 20-04-2005, which is annexed to the Writ Petition, requesting the respondent-authority to grant exemption of tax for the period from 17-5-2004 to 06-04-2005 in respect of his Goods Vehicle bearing No.AP 25 U 5043, the petitioner cannot be granted any exemption as it appears from his pleading itself that the vehicle in question was not out of use after 06-04-2005.

The Writ Petition is, accordingly, dismissed. No costs.

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(Bilal Nazki, J)

19th April, 2007

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(Nooty Ramamohana Rao, J)

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[1] **2004(5) ALD 68 (DB)**